

### **REMARKS**

Applicants would like to thank the Examiner for the substantive review provided in this case. In the non-final Office Action dated March 25, 2010, claims 1-17 and 111-114 were rejected. Upon entry of this Response, claims 1-11, 13-18 and 111-114 are pending and at issue.

### **DOUBLE PATENTING CLAIM REJECTIONS**

#### ***Claims 1, 2, 3 and 8-10***

The Examiner has provisionally rejected claims 1, 2, 3 and 8-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 7-10, 13-16, 41, 42, 45 and 49-51, 53-59, 62 and 72-74 of co-pending U.S. Application No. 11/258,598. Claim 1 has further been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 19-23 of co-pending U.S. Application No. 10/493,874.

Applicants respectfully submit that because no allowable subject matter has been indicated in any of the pending applications at issue, any action by Applicants or the Examiner with regard to the filing of a terminal disclaimer is premature. Accordingly, reconsideration of the Examiner's provisional rejection of claims 1, 2, 3 and 8-10 on the ground of nonstatutory obviousness-type double patenting is respectfully requested.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

#### ***Claims 1, 2, 12-15, 16, 17, 18 and 111-114***

Claims 1, 2, 12-15, 16, 17, 18 and 111-114 currently stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,167,313 to Gray et al. ("Gray") in view of U.S. Patent No. 4,979,518 Itoh et al. ("Itoh") and U.S. Patent Application Publication No. 2005/0271745 to Gruettner et al. ("Gruettner"). Applicants traverse this rejection in view of the arguments presented in this paper.

Gruettner published on December 8, 2005, after the filing date of the present application. As such, Gruettner cannot qualify as a reference under 35 U.S.C. § 102(b), and can only qualify as a reference under 35 U.S.C. §§ 102(a) and 102(e). At the time the invention of the present application was made, the present application and Gruettner were owned by Triton Biosystems, Inc.

Accordingly, because Gruettner fails to qualify as a reference under 35 U.S.C. § 102, Gruettner cannot be used as a reference in a rejection under 35 U.S.C. § 103(a). Therefore, withdrawal of the Examiner's rejections under 35 U.S.C. § 103(a) and reconsideration of claims 1, 2, 13-15, 16, 17, 18 and 111-114 are respectfully requested. As claim 12 was canceled in the Response to Office Action dated December 11, 2009, the rejection of such claim is rendered moot.

***Claims 3, 4, 8, 9, 10 and 11***

Claims 3, 4, 8, 9, 10 and 11 stand rejected as allegedly obvious over Gray in view of Itoh and Gruettner further in view of U.S. Patent Application Publication 2005/0151438 to Huang et al. ("Huang"). Because claims 3, 4, 8, 9, 10 and 11 either directly or indirectly depend from and add further limitations to amended independent claim 1, such claims are allowable for at least the same reasons as amended independent claim 1. Accordingly, withdrawal of the Examiner's rejections of claims 3, 4, 8, 9, 10 and 11 and reconsideration of such claims are respectfully requested.

***Claims 5, 6 and 7***

Claims 5, 6 and 7 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Gray in view of Itoh and Gruettner further in view of U.S. Patent No. 6,477,398 to Mills ("Mills"). Because claims 5, 6 and 7 either directly or indirectly depend from and add further limitations to amended independent claim 1, claims 5, 6 and 7 are allowable for at least the same reasons. Accordingly, withdrawal of the Examiner's rejection under 35 U.S.C. § 103(a) and reconsideration of claims 5, 6 and 7 are respectfully requested.

***Claim 12***

Claim 12 currently stands rejected as allegedly unpatentable over Gray in view of Itoh and Gruettner further in view of U.S. Patent Application Publication 2003/0032995, now U.S. Patent No. 6,997,863, to Handy et al. ("Handy"). Claim 12 was canceled in the Response to Office Action dated December 11, 2009. The rejection of such claim is rendered moot in light of this amendment.

CONCLUSION

In view of the above, it is believed that this application is in condition for allowance, and a Notice thereof is respectfully requested. Should the Examiner have any questions or comments, or need additional information to expedite prosecution of this application, she is invited to contact the undersigned at her convenience.

Respectfully submitted,



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